

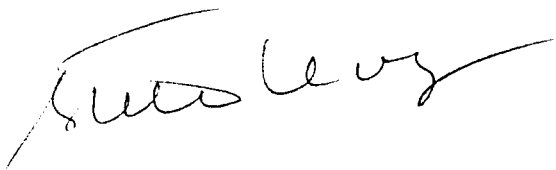
*Cigarette & Tobacco Products Tax
Rev & Tax E 30474
Local prosecuting jurisdiction*

Memorandum

To : Mr. Monte Williams
Excise Taxes Division MIC:56

Date: February 23, 1995

From : Stella Levy
Staff Counsel



Subject: "Prosecuting Jurisdiction" in Cigarette Tax Evasion Cases

QUESTION PRESENTED

I am responding to your request for a legal opinion regarding the interpretation of "prosecuting jurisdiction," as that term is used in Revenue and Taxation Code section 30474. Specifically, you have asked whether local law enforcement agencies and/or the Office of the Attorney General (AG) can receive 50% of the penalty assessed under Revenue and Taxation Code section 30474 for selling unstamped cigarettes.

BRIEF ANSWER

A local law enforcement agency is not a "prosecuting jurisdiction" permitted to receive 50% of the penalty assessed on sales of unstamped cigarettes. However, in cases prosecuted by the AG, that agency could be considered to be the prosecuting jurisdiction.

APPLICABLE LAW

Revenue & Taxation Code

Changes to Revenue and Taxation Code section 30474, effective January 1, 1993, raised the penalty for trafficking in unstamped cigarettes from \$50 to \$100 per carton and also added the following language:

The court shall direct that 50 percent of the penalty assessed be transmitted to the local prosecuting jurisdiction, to be allocated for costs of prosecution, and 50 percent of the penalty assessed be transmitted to the State Board of Equalization.

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Changes were also made to Revenue and Taxation Code section 30461 with the addition of subsection (b), which provides that

The board shall transmit amounts received from the penalty assessed pursuant to Section 30474 to the Treasurer for deposit in the General Fund.

California Constitution

The California Constitution vests the AG with enormous powers. Article V, section 13, provides as follows:

Subject to the powers and duties of the Governor, the Attorney General shall be the chief law officer of the State. It shall be the duty of the Attorney General to see that the laws of the State are uniformly and adequately enforced. The Attorney General shall have direct supervision over every district attorney and sheriff and over such matters pertaining to the duties of their respective offices, and may require any of said officers to make reports concerning the investigation, detection, prosecution, and punishment of crime in their respective jurisdictions as to the Attorney General may seem advisable. Whenever in the opinion of the Attorney General any law of the State is not being adequately enforced in any county, it shall be the duty of the Attorney General to prosecute any violations of law of which the superior court shall have jurisdiction, and in such cases the Attorney General shall have all the powers of a district attorney. When required by the public interest or directed by the Governor, the Attorney General shall assist any district attorney in the discharge of the duties of that office.

DISCUSSION

Local Police

The legislative intent of the recent amendments to section 30474 was to provide an incentive for local district attorneys to prosecute cigarette tax evasion cases. The funds are for reimbursement of costs of prosecution.

A prosecutor or prosecuting attorney is "the public officer who is appointed or elected in each judicial district circuit, or county to conduct criminal prosecutions on behalf of the State or people." (Black's Law Dictionary.) The word "jurisdiction" usually refers to the power of a court to hear and decide a case but it can also refer to "the geographic area in which a court has power to hear." (*ibid.*) The term "prosecuting jurisdiction" has no legal meaning but appears to be a reference to the office of the prosecutor. Local police and sheriffs are not attorneys and do not carry out criminal prosecutions, though they frequently work closely with prosecutors. There is no provision in the current statute for giving incentives to local law enforcement. However, the office of the prosecutor (usually the district attorney) may be permitted to share its allocation with police. County counsel would be able to provide an opinion as to the legality of such action under the rules and procedures in effect in a particular county. If it is permissible to share the allocation, it would be particularly justifiable in cases where successful prosecution is attributable to extensive police investigation. The Board is not able to share its allocation with police because all amounts received by it must be deposited in the General Fund.

Attorney General

Unlike the police or sheriff, the AG is a prosecutor whose office incurs "costs of prosecution." In the area of criminal law, the AG supervises all district attorneys and sheriffs. (Cal. Const., art V, § 13; Gov. Code, §§ 12550, 12560.) The AG also collects and disseminates records of criminal investigations, arrests, and convictions (Pen. Code, §§ 11101-11102, 11103-11105, 11075-11079, 13020-13022; Gov. Code, §§ 15150-15167). The AG has broad power to collect and disseminate data on citizens as well as to investigate any crime as the chief law officer of the state. (Gov. Code,

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§ 12550.) The AG has power to inspect all books and records of people and businesses under investigation by a state agency (Gov. Code, §§ 11180.5, 11181).

District Attorney

All criminal prosecutions are brought in the name of the People of the State of California. (Gov. Code, § 100.) The district attorney is the public prosecutor whose duty is "all prosecutions for public offenses" such as tax evasion. However, when the AG prosecutes criminal cases pursuant to constitutional authority, then "the Attorney General is the public prosecutor as to such cases." (65 Ops.Cal.Atty.Gen 332 (1982).) Thus, there is no legal prohibition to allocating 50% of the penalty to the AG in cases it has prosecuted. In such instances, the AG could be considered to be the local prosecutor.

CONCLUSION AND RECOMMENDATIONS

Local law enforcement does not prosecute and, therefore, is not a "prosecuting jurisdiction" entitled to the penalty allocation. However, where such agencies have played a significant role in the ability to successfully prosecute a case, the Board is not prohibited from informing such agencies that they can request a part of the prosecutor's allocation and/or recommending such allocation sharing.

The AG can be considered to be the local prosecuting jurisdiction and entitled to the penalty allocation where it, and not the district attorney, prosecutes the tax evasion case.

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